

UNDER SECRETARY OF STATE
FOR POLITICAL AFFAIRS
WASHINGTON

January 23, 1971

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Attachment

Dear Joe:

As I indicated when we spoke over the telephone on January 13, I am writing in response to your letter of December 29, 1970 outlining Comsat's concerns regarding the provision of U.S. launch services to other countries seeking to launch regional communications satellites. You mentioned specifically the discussions which we have had with the European Space Conference regarding possible European participation in the U.S. post-Apollo space program.

As I am sure you know, the conversations which we conducted with the Europeans were pursuant to an instruction from the President to the Department of State and NASA to do all possible to obtain substantial international, and particularly Western European, financial and other material participation in the post-Apollo space program. If such participation could be obtained it would result in substantial financial, technological and political benefits to the U.S. Government.

The authoritative U.S. Government position with respect to European participation in the post-Apollo space program is that contained in my letter of October 2, 1970 to Theo Lefevre, Chairman of the European Space Council, the text of which is contained in State Department message CA-5237 of October 9, a copy of which I am forwarding with this letter in the event you had not previously seen the full text. As that letter states, the views set forth

The Honorable

Joseph V. Charyk, President,
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therein are preliminary and, in the case of the U.S. assurance of reimbursable launch services, entirely subject to a substantial European participation in the post-Apollo program on mutually agreeable conditions and terms.

Prior to and during the conversations with the ESC delegation, it was quite clear that a major consideration in a European decision to participate in a post-Apollo program was whether Europe could devote the resources now devoted to developing an independent launch capability to this purpose or whether such participation would be additive to their present launch program and thus require substantial additional resources. From the standpoint of over-all U.S. policy interests, as well as from the standpoint of doing the maximum to encourage European participation in the post-Apollo program, the former was the obviously preferred choice. I felt that such a choice would also clearly be in the interest of Comsat and INTELSAT.

If Europe were to abandon its effort to develop an independent launch capability, it was obviously and clearly interested in the availability of U.S. launches, both before and after the development of the new space transportation system, and much of the discussion, as well as my letter to Minister Lefevre, revolved around this point. In this regard, the portions of the letter pertinent to the interests of Comsat and INTELSAT are paragraphs 2, 4, and 11. Paragraph 2 states that launch services would be made available "for any peaceful purpose consistent with relevant international agreements." Paragraph 4 states that by "consistent with relevant international agreements" it is meant the "obligations of the U.S. and European countries as contained in such agreements as ... the INTELSAT agreement." Paragraph 11 states that in terms of draft Article XIV of the INTELSAT agreement as it was then proposed, the United States assurance "would apply in those cases where no negative finding is made by the appropriate INTELSAT organ, regardless of the position taken by the U.S. in the vote", and that where there was a "negative finding by the appropriate INTELSAT organ" the U.S. could not obligate itself in advance to assure launch services.

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During the informal and oral discussion which led up to these statements I made it specifically clear that I was not authorized, nor was I in any way purporting to interpret, modify or in any way negotiate on the language or meaning of Article XIV, as that was a matter solely to be handled within the framework of the INTELSAT negotiations. Minister Lefevre entirely concurred with this position.

Thus my discussion with Minister Lefevre of possible contingencies that could arise under Article XIV was entirely hypothetical. The hypothetical situation most discussed by us was that of a negative finding as to the economic compatibility of a regional communications satellite system based on a two-thirds vote of the Assembly. This followed from the language of draft Article XIV, which stipulates that "the Assembly of Parties ... shall express, in the form of recommendations, its findings." Thus the discussion of U.S. assurances of launch services was predicated on specific findings by INTELSAT, under the assumption that the absence of a specific recommendation by the Assembly of Parties would not constitute a finding, either positive or negative. I note from your letter of December 29, 1970, that this is also Comsat's view of the range of possible outcomes under the present wording of Article XIV.

However, there is an ambiguity in the wording of Article XIV which arises from the apparent possibility under the terms of that Article as currently drafted that the Assembly of Parties might fail to fulfill its obligation to make a specific finding if it were in fact unable to make any recommendation, either positive or negative, by a two-thirds vote. On the other hand, the interpretation of the intent of this Article held by important delegations to the INTELSAT Conference (including the U.S. Delegation) is that the failure of a positive recommendation to achieve a two-thirds vote automatically constitutes a negative finding. This difference in interpretation clearly has an important bearing on the prelimi-

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nary assurances of U.S. action in this contingency (that of a negative finding by the Assembly) as conveyed to Minister Lefevre and the ESC in my letter.

I believe that the resolution of this ambiguity in the wording of Article XIV is a matter for clarification within the framework of the INTELSAT negotiations and that the language of the INTELSAT definitive arrangements or the legislative history accompanying those arrangements should be clearly drawn so as to eliminate any possible ambiguity.

In an effort to resolve this problem and to reconcile the U.S. Government interests in the maintenance of a strong INTELSAT arrangement and in securing European cooperation in the post-Apollo program, I would propose now to proceed on the following course of action, which I hope will be satisfactory to you as well as to the other concerned parties:

A. The U.S. will support the U.S. INTELSAT Delegation's interpretation of Article XIV--namely-- Article XIV requires the proponent(s) of a regional system to bear the burden of persuading two-thirds of the Assembly that the proposal will not cause significant economic harm to INTELSAT and will not prejudice the establishment of direct links to the global system: Failure to meet this requirement will be considered a negative finding.

B. The U.S. at an appropriate and early date, will inform the ESC of the U.S. position on Article XIV. Recognizing that this interpretation of Article XIV limits the launch commitment in my letter of October 2, 1970, and recognizing the need to enable the Europeans to make early decisions on participation in the post-Apollo program (possibly before the INTELSAT definitive arrangements have been brought into effect), the U.S. would propose to invite the Europeans now to identify the regional telecommunications satellites for which the ESC may wish to obtain U.S. launching services in the period prior to the

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coming into effect of the new space transportation system (e.g., over the next decade), so that the U.S. could in turn provide an advance indication of its position on the suitability of these proposals under the criteria of INTELSAT Article XIV.

With respect to the period after the new space transportation system becomes operational, the ESC would be informed that the provision of U.S. launching services would continue to be governed by the principles set forth in my October 2, 1970, letter to Lefevre and in the discussions contemplated by the present proposal.

C. To implement this strategy vis-a-vis the Europeans, the U.S. would inform ESC that the U.S. Government has had the opportunity to review the meaning of Article XIV in depth and has also given further consideration to the question of the availability of launcher services pending the development of post-Apollo hardware. The U.S. would then set out its position on Article XIV and emphasize that it would help clarify the importance of the U.S. commitment to move the discussion to more specific grounds. We would therefore suggest that the European Space Conference prepare and submit to the U.S. a description of the international telecommunications satellites for which the ESC may wish to obtain U.S. launching services in the period prior to the coming on line of the new space transportation system. With respect to these proposals, the U.S. would undertake to determine, with reasonable dispatch, the position it would take in the INTELSAT Assembly were such specific proposals to be put forward. There would be every likelihood that any proposal in INTELSAT which had the support of both the European countries and the United States would obtain a two-thirds favorable vote. Correspondingly, there is only the remotest possibility that a two-thirds favorable vote would ever be attained in a situation where the United States opposed a proposal on the grounds that it would do significant harm to

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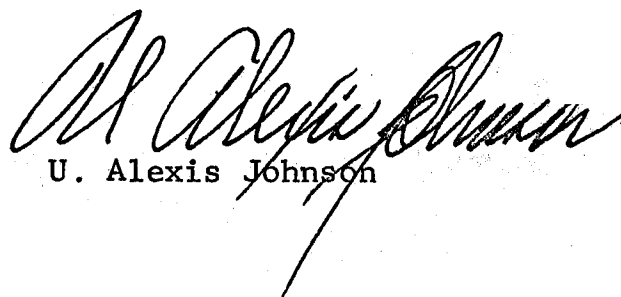
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INTELSAT. It being clear that an absolute minimum condition for European support of a post-Apollo agreement is that the United States commit itself in advance to provide launch services in the event that a two-thirds favorable vote is obtained in the Assembly, we would propose to reaffirm such a commitment. The U.S. would not commit itself in advance to provide launch services for any proposal which failed to attain a two-thirds favorable vote.

I hope you will find this information helpful.

Sincerely,



U. Alexis Johnson

Enclosure:

State Department message
CA-5237, October 9, 1970.

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